

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MATT A. DAVIS,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 06-336-GPM
)	
COUNTY OF MADISON, ILLINOIS, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

MURPHY, District Judge:

This matter is before the Court on the motion for voluntary dismissal brought by Plaintiff Matt A. Davis in the above-referenced case (Doc. 147). In the motion Davis requests voluntary dismissal without prejudice of his claims in this case against Defendants Brad Besson and Diane Fritschle. Additionally, Davis advises the Court that he has reached a settlement with Defendants County of Madison, Illinois (“the County”), Robert Hertz, Dennis Fischer, Joseph Gulash, and Robert Hollenbeck and requests dismissal with prejudice of his claims against the County, Hertz, Fischer, Gulash, and Hollenbeck. Davis’s request for voluntary dismissal of his claims against Besson, Fritschle, the County, Hertz, Fischer, Gulash, and Hollenbeck is unopposed.

Voluntary dismissal in this instance is governed by Rule 41 of the Federal Rules of Civil Procedure, which provides, in relevant part, “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper Unless the order states otherwise, a dismissal . . . is without prejudice.” Fed. R. Civ. P. 41(a)(2). As the language of Rule 41(a)(2)

suggests, a grant or denial of voluntary dismissal and the imposition of any conditions upon a grant of voluntary dismissal are matters committed to a court's discretion. *See Kunz v. DeFelice*, 538 F.3d 667, 677 (7th Cir. 2008); *Wojtas v. Capital Guardian Trust Co.*, 477 F.3d 924, 927 (7th Cir. 2007); *Mother & Father v. Cassidy*, 338 F.3d 704, 709 (7th Cir. 2003); *FDIC v. Knostman*, 966 F.2d 1133, 1142 (7th Cir. 1992); *Tyco Labs., Inc. v. Koppers Co.*, 627 F.2d 54, 56 (7th Cir. 1980); *Document Generation Corp. v. AllMeds, Inc.*, Civil No. 07-841-GPM, 2009 WL 2849076, at *2 (S.D. Ill. Sept. 1, 2009); *Futch v. AIG, Inc.*, Civil No. 07-402-GPM, 2007 WL 1752200, at *2 (S.D. Ill. June 15, 2007); *Buller v. Owner Operator Indep. Driver Risk Retention Group, Inc.*, 461 F. Supp. 2d 757, 767 (S.D. Ill. 2006). The Court will grant Davis's request for voluntary dismissal without prejudice of his claims against Besson and Fritschle subject to the condition that, in the event Davis should re-file his claims against Besson and Fritschle, Davis's current attorneys Winston & Strawn, LLP, will continue to represent Davis in the prosecution of his claims against Besson and Fritschle. Also, the Court will grant Davis's request for voluntary dismissal with prejudice of his claims against the County, Hertz, Fischer, Gulash, and Hollenbeck and enter judgment accordingly as to the County, Hertz, Fischer, Gulash, and Hollenbeck.¹

1. In his motion for voluntary dismissal Davis requests that the Court in granting voluntary dismissal with prejudice of his claims against the County, Hertz, Fischer, Gulash, and Hollenbeck provide for the dismissal to take effect after a period sufficient to allow Davis time to finalize his settlement with the County, Hertz, Fischer, Gulash, and Hollenbeck. This is not the Court's usual practice and in any event Davis does not specify how much time he needs to finalize the settlement; also, trial on Davis's claims against the County, Hertz, Fischer, Gulash, and Hollenbeck is due to begin September 22, 2009. Accordingly, the Court deems the voluntary dismissal with prejudice of Davis's claims against the County, Hertz, Fischer, Gulash, and Hollenbeck to be effective upon entry of this Order. In the event it becomes necessary for Davis to do so, he may seek relief from the Court's judgment entered upon this Order pursuant to Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, as the case may be. *See Fed. R. Civ. P. 59(e); Fed. R. Civ. P. 60(b); Koelling v. Livesay*, 239 F.R.D. 517, 520 (S.D. Ill. 2006).

To conclude, Davis's motion for voluntary dismissal (Doc. 147) is **GRANTED**. Besson and Fritschle are **DISMISSED without prejudice** from this action, subject to the condition that, in the event Davis should re-file his claims against Besson and Fritschle, Davis's current attorneys Winston & Strawn, LLP, will continue to represent Davis in the prosecution of his claims against Besson and Fritschle. The County, Hertz, Fischer, Gulash, and Hollenbeck are **DISMISSED with prejudice** from this action. The Clerk of Court will enter judgment accordingly.

IT IS SO ORDERED.

DATED: September 16, 2009

/s/ G. Patrick Murphy
G. PATRICK MURPHY
United States District Judge